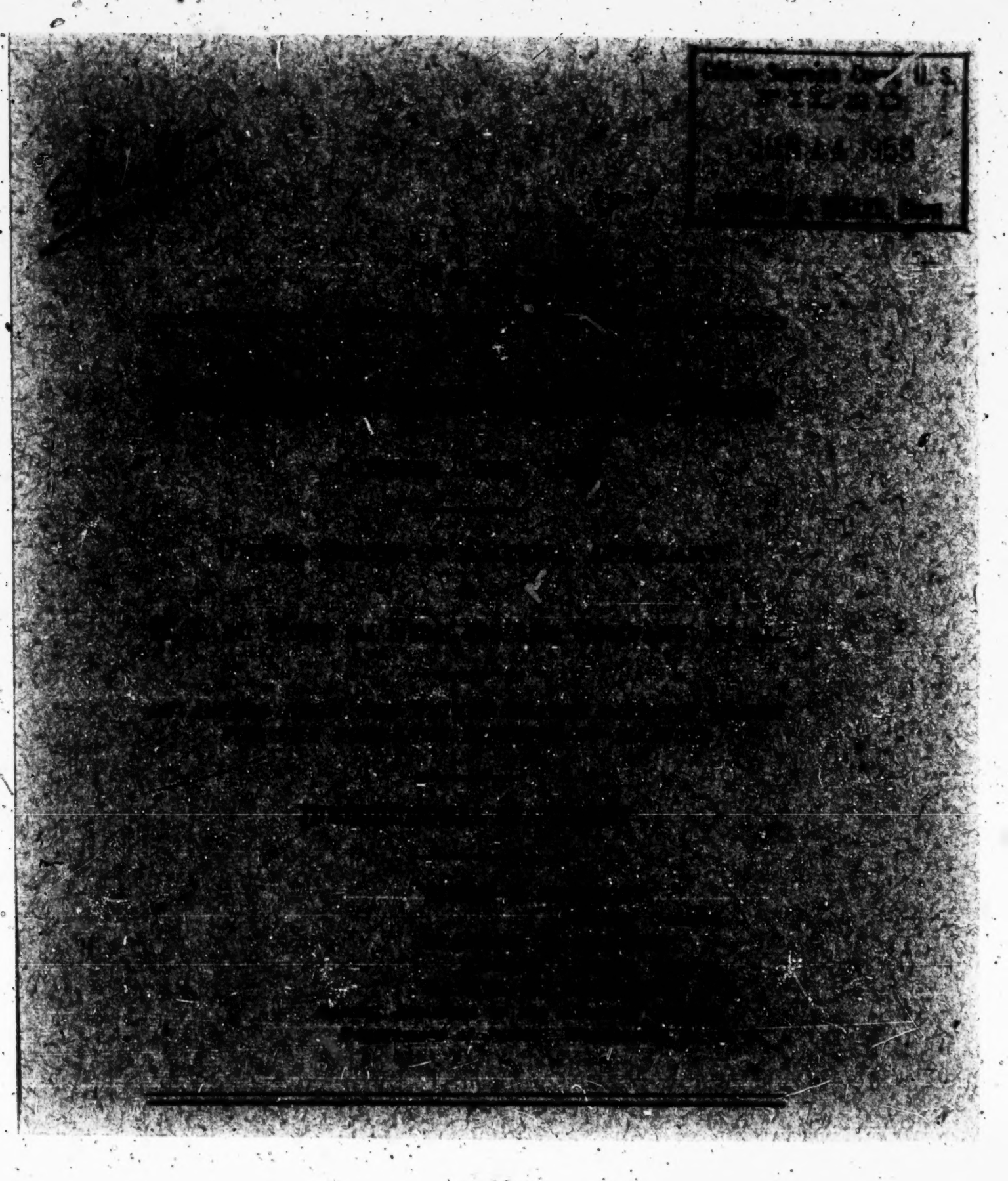

INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

UNITED STATES OF AMERICA, APPELLANT

v.

E. I. DU PONT DE NEMOURS AND COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, is reported in 126 F. Supp. 235. Printed copies of the opinion have been furnished to the Court.

JURISDICTION

This suit was brought under Section 4 of the Act of July 2, 1890, 26 Stat. 209, as amended, 15 U. S. C. 4, and Section 15 of the Act of October 15, 1914, 38 Stat. 730, as amended, 15

U. S. C. 25. The judgment of the district court was entered on December 9, 1954, and the notice of appeal was filed in that court on February 4, 1955. The jurisdiction of this Court to review by direct appeal the judgment entered in this case is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. 29, as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869.

The following decisions sustain the jurisdiction of this Court to review by direct appeal the judgment in this case: *United States* v. *U. S. Gypsum Co.*, 333 U. S. 364; *International Business Machines Corp.* v. *United States*, 298 U. S. 131.

STATUTES INVOLVED

The pertinent provisions of sections 1, 2, and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C. 1, 2, 4), commonly known as the Sherman Act, are as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *.
>
> SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine

or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.

* * * * *

SEC. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations.

The pertinent provisions of Section 7 (as it read at the time the complaint was filed) and Section 15 of the Act of October 15, 1914, 38 Stat. 730 (15 U. S. C. 18, 25), commonly known as the Clayton Act, are as follows:

SEC. 7. No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

* * * * *

SEC. 15. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *

QUESTIONS PRESENTED

1. Whether the district court erred in failing to find and to conclude:

(a) That E. I. du Pont de Nemours and Company (du Pont), by its acquisition in 1918 of 23% of the outstanding capital stock of General Motors Corporation (General Motors) and its continuing ownership of at least this percentage of General Motors' outstanding stock, by the ensuing permeation of the top echelon of General Motors' management by du Pont officers and directors and other persons closely affiliated with it, and by the close working relationship which has existed between the companies since that time, has had power to control, and effective working control of, General Motors throughout the period covered by the Government's complaint.

(b) That one of the purposes of du Pont in acquiring and retaining such stock interest in General Motors was to obtain for du Pont preference over its competitors in the sale of products to General Motors and in the development, pro-

duction, and sale of commercially valuable chemical products based on discoveries made by General Motors and covered by patents held by it.

(c) That du Pont's stock interest in General Motors and the active participation of du Pont representatives in General Motors' management tended to give and gave du Pont a preference over its competitors in the sale of products to General Motors and in the development, production, and sale of commercially valuable chemical products discovered by General Motors, with resulting restraint of the trade of du Pont's competitors.

2. Whether the district court erred insofar as it made findings and reached conclusions inconsistent with 1 (a), 1 (b), and 1 (c) above.

3. Whether, under the circumstances set forth in question 1, du Pont and General Motors constitute a combination in restraint of interstate trade in violation of Section 1 of the Sherman Act, and a combination to monopolize a part of such trade in violation of Section 2 of that Act.

4. Whether the effect of du Pont's acquisition and retention of General Motors stock may be to restrain interstate trade in any section of the country, or to tend to create a monopoly of any line of interstate commerce, in violation of Section 7 of the Clayton Act.

5. Whether the United States is entitled to relief which, in addition to appropriate injunctive provisions, would require du Pont to divest itself

of its General Motors stock, and would require Christiana Securities Company and Delaware Realty & Investment Corporation (if du Pont should be permitted to divest through a distribution of General Motors stock to du Pont stockholders) to dispose of all General Motors stock received as a result of such distribution.

STATEMENT

This is a civil action brought by the United States in June 1949 under Section 4 of the Sherman Act and Section 15 of the Clayton Act. The amended complaint charged (Par. 29) that du Pont, General Motors and United States Rubber Company (U. S. Rubber) (together with two holding companies, a bank, and individual members of the du Pont family) had been engaged since 1915 in a combination and conspiracy to restrain interstate trade and commerce in a number of products manufactured and distributed by du Pont, General Motors and U. S. Rubber, and had conspired and combined to monopolize a substantial part of such trade and commerce, in violation of Sections 1 and 2 of the Sherman Act. The complaint further charged (*ibid.*) that du Pont had acquired a "controlling interest" in the stock of General Motors, the effect of which acquisition has been to substantially lessen competition between the companies and to tend to create a monopoly in particular lines of commerce, in violation of Section 7 of the Clayton Act.

The grayamen of the complaint (as to the du Pont-General Motors aspect of the case) was that du Pont's ownership of 23% of the outstanding stock of General Motors (which it acquired initially in 1918), and the close working relationships between the top management of the two companies, gave du Pont effective working control of General Motors and that, as a consequence of such control, du Pont (1) obtained preferences over its competitors in the sale to General Motors of products which it manufactured, and (2) obtained the right to exploit for its own benefit General Motors' chemical discoveries.

Trial of the case before Judge Walter J. LaBuy began on November 18, 1952, and concluded on June 29, 1953. Final arguments were heard in December 1953. On December 3, 1954, the court rendered a lengthy opinion in which it held that the Government had failed to prove its case. Judgment dismissing the complaint was entered on December 9, 1954.

The court held (1) that du Pont does not control General Motors (Op. 40) or U. S. Rubber (Op. 65); (2) that General Motors' sizable purchases from du Pont and its turning over of chemical discoveries to du Pont for exploitation were the result of its own independent business judgment, and not of any pressure or domination by du Pont (Op. 114–115, 132–134, 144–145, 170, 181); and (3) that General Motors' substantial

purchases of tires and tubes from U. S. Rubber resulted from its own business reasons and not from du Pont pressure (Op. 210).

Since this appeal challenges only the court's conclusions as to the du Pont-General Motors phase of the case, we shall not discuss the facts relating to the relationship between those companies and U. S. Rubber. In the Statement we shall set forth (1) the pertinent facts relating to du Pont's control of General Motors, and the court's conclusions thereon; and (2) certain aspects of the intercorporate dealings between the companies. The Statement is based on the court's opinion, which it adopted as its findings.

1. CONTROL OF GENERAL MOTORS BY DU PONT

A. THE FACTS

Since March 1918 du Pont at all times has owned at least 23% of General Motors' outstanding stock (Op. 19). The remainder of the stock is widely distributed; in 1947 it was held by more than 430,000 stockholders, 92% of whom owned no more than 100 shares each, and 60% of whom owned no more than 25 shares each (*ibid.*). At times du Pont's holdings represented 51% of the total stock voted at General Motors' stockholders' meetings (Op. 41, 42).

At the time of du Pont's original investment in 1918 (when it acquired 23% of the stock) General Motors was controlled by W. C. Durant, its founder and then president (Op. 10–11, 13). The

purchase was made on the understanding that du Pont and Durant jointly would control General Motors and that du Pont would assume responsibility for General Motors' financial obligations (Op. 12, 13). This understanding was carried out, and from 1918 to 1920, "du Pont and Durant jointly controlled General Motors" (Op. 17).

Late in 1920, after Durant became financially involved because of large loans for which his General Motors stock was pledged as security, du Pont formed a subsidiary for the purpose of taking over and liquidating those loans, and as a result it became the owner of 38% of the stock (Op. 17–18).[1] At the urging, among others, of the du Pont Finance Committee, Pierre S. du Pont took over the presidency of General Motors (Op. 19). He held that post until 1923 when, upon his recommendation, Alfred P. Sloan became president (Op. 19, 22–23). During Pierre du Pont's term as president, three of the six members of the General Motors Executive Committee and seven of the eleven members of the Finance Committee were "du Pont men" and Haskell,

[1] In 1923 du Pont sold the additional stock acquired in 1920 to Managers Securities, a corporation organized by General Motors to carry out a bonus stock plan for General Motors executives. Du Pont retained the voting rights on that stock until 1930, when the executives to whom the bonus stock had been allocated completed payments on it and began to receive it, and by 1938 du Pont had surrendered the voting rights on all that stock. (Op. 18, 36.)

a former du Pont sales manager and vice-president, was vice-president in charge of the General Motors Operations Committee (Op. 22). The defendants conceded that during this period "nominees of du Pont were thrust into positions of responsibility in General Motors which went beyond the financial supervision which had been their earlier role" (*ibid.*).

In 1923, at the suggestion of Pierre du Pont, du Pont "sponsored and supported" an "additional compensation plan," under which certain principal General Motors executives were permitted to purchase General Motors stock on favorable terms, with one-seventh paid down and the balance to be paid out of future bonuses and earnings on the stock purchased (Op. 34–36). A three-man committee was established to make the awards, consisting of Pierre du Pont, then chairman of the General Motors Board, and two other directors (Op. 36). The awarding of bonus stock subsequently was taken over by the Bonus and Salary committee, and from 1941 to 1948 (the only years for which committee personnel records are available) a majority of its members were "du Pont representatives" (Op. 37–38).

Since 1923, du Pont officials and persons closely affiliated with that company have served in important posts in the General Motors organization, both as directors and officers, and as members of the various General Motors committees. General Motors officials frequently sought du Pont's views

as to prospective directors and committee members, and as to contemplated corporate action. (Op. 23–34, 83–84.)

B. THE COURT'S CONCLUSIONS AS TO CONTROL

The court found (Op. 40, 42) that since the 1920's du Pont has not had, and does not today have, "practical or working control" of General Motors, and that du Pont "did not and could not conduct itself, for the past 25 years, as though it were the owner of a majority of the General Motors stock."[2] These ultimate findings rested on subsidiary findings that du Pont's original acquisition of General Motors stock "was essentially an investment" motivated by the "profitable employment" of a large part of du Pont's surplus, and was not made with the purpose of restricting General Motors' freedom to purchase in accordance with its own best interests (Op. 14–15); that du Pont's participation in the selection of General Motors directors and committees and in determining the organization of the General Motors Board did not establish that

[2] The court also found (Op. 9) that the du Pont family, through its voting control of appellees Christiana Securities Company and Delaware Realty and Investment Corporation, has "control of management" of du Pont. Since its formation in 1915, Christiana has held 27% of du Pont's outstanding stock (Op. 5–6). An additional 11% of the du Pont stock is held by Delaware and by individual members of the du Pont family (Op. 8). In 1949 du Pont had 82,000 stockholders (*ibid.*).

du Pont had been the "controlling force" in the direction of General Motors' affairs (Op. 33), or that it thereby sought to place people in General Motors who would further du Pont's interests as a supplier or a chemical manufacturer (Op. 34); that the record shows "consultation and conference, but not domination" (Op. 33); that, although some du Pont representatives did participate in the awarding of bonuses to General Motors executives, there is no evidence that in doing so they attempted to further du Pont's own interests (Op. 39); and that, although du Pont at times voted 51% of the stock voted at a stockholders meeting, there never had been a contest for control and it was "entirely conjectural" whether du Pont "by its stock ownership could control if there had been a contest" (Op. 41–42).

2. TRADE RELATIONS BETWEEN DU PONT AND GENERAL MOTORS.

The Government contended that, as a consequence of du Pont's controlling interest in General Motors, the latter's trade has been restrained in two respects: first, that du Pont secured a preferred position as a General Motors supplier; and, second, that du Pont has been able to obtain the exclusive right to exploit certain chemical discoveries of General Motors. The court rejected both of these contentions, finding that General Motors' substantial purchases from du Pont, and its turning over of various chemical discoveries

to du Pont for development, production and sale, were the result of General Motors' independent business judgment, and not of any pressure by du Pont.

The court's opinion discusses the evidence on these issues at length. Since, as we point out under the heading "The Questions Are Substantial", we think that the court applied an erroneous standard in evaluating this evidence, we shall not attempt to set it forth in any detail, but shall merely refer to certain significant aspects of the trade relations between the two companies.

During 1917, du Pont decided to utilize part of its war profits to expand into fields other than gunpowder and explosives (Op. 66–67). At the time of its purchase of the General Motors stock in 1918, du Pont already had made investments in companies manufacturing artificial leather, celluloid, rubber coated goods, paints and varnishes, and it continued thereafter to make such acquisitions (Op. 68–69). A 1917 report recommending that du Pont make a substantial investment in General Motors, which was prepared by John J. Raskob and approved by Pierre du Pont, pointed out that such investment would, among other things, secure for du Pont the "entire Fabrikoid, Pyralin, paint and varnish business" of General Motors (Op. 12–13).

In 1921, approximately three years after du Pont's investment in General Motors, Pierre du Pont, president and chairman of the General

Motors Board, asked Lammot du Pont, a vice president of du Pont, whether General Motors was taking its entire requirements of du Pont-type products from du Pont. When Lammot stated that it was not, Pierre replied that "with the change in management at Cadillac, Oakland, and Oldsmobile" he thought that du Pont should be able to sell substantially all the paint, varnish, and Fabrikoid products needed, and that "a 'drive for the Fisher Body business' should be made" (Op. 77).[3]

In a 1923 meeting of du Pont and General Motors officials it was concluded "that General Motors units should purchase 20% of their leather substitutes and top material from one of du Pont's competitors, leaving 80% to du Pont at prices determined by competition" (Op. 90). In 1926 du Pont adopted the so-called "super discount plan" under which General Motors was given extra discounts for quantity purchases from du Pont (Op. 107–108). In offering these discounts to General Motors, a du Pont official urged that the matter be kept "confidential" as "an

[3] In the latter part of 1922 Lammot du Pont, chairman of the Flint Paint Division of du Pont, wrote to the President of Fisher Body (60% of whose stock General Motors then owned (Op. 79)) that, in view of the stock ownership relations among the companies, it would seem that Flint should enjoy a large part, if not all, of Fisher's paint and varnish business (Op. 78). Du Pont obtained the major share of Fisher Body's fabric business in 1925 and 1926, the approximate period when General Motors acquired the remaining 40% of Fisher Body's outstanding stock (Op. 105-106).

arrangement within the du Pont-General Motors family * * *" because the arrangement could not be continued unless du Pont were able to secure "much higher prices from [its] other customers" (Op. 108).

Throughout the period covered by the complaint du Pont "has retained its position as the most important single supplier of General Motors" (Op. 133), and for the ten years preceding the filing of the complaint General Motors has been du Pont's largest single customer (Op. 130). Approximately three-quarters of du Pont's total sales to General Motors have consisted of products of its Finishes Division, and General Motors has purchased approximately 70% of its finishes from du Pont (Op. 131–132). For the six years 1938–1941 and 1946–1949 du Pont's total sales of finishes to General Motors were approximately $69,000,000 (Op. 130–131). On occasion General Motors made substantial purchases from du Pont although prices of competing sellers were lower (e. g., Op. 110). Indeed, it appears that du Pont frequently reduced its prices to General Motors only under the pressure of lower prices by competitors (Op. 128–129).

The evidence as to du Pont's exploitation of General Motors' chemical discoveries primarily relates to two products, tetraethyl lead (TEL), used to prevent knocking in automobile engines, and Freon, a refrigerant. The TEL story is long

and complicated. In brief, the facts are that General Motors, which held the basic patents on the product, and Standard Oil, which developed an improved manufacturing process, formed the Ethyl Corporation to market TEL. The actual manufacturing, however, was done by du Pont for the Ethyl Corporation. This arrangement was extremely profitable to du Pont. From 1930 to 1937, its total profits on TEL were $35,000,000. General Motors and Standard Oil each received dividends of $30,000,000, and General Motors received $19,000,000 in royalties (Op. 168).

Freon, another General Motors discovery, similarly was exploited by du Pont. In 1930 General Motors decided to undertake commercial production of this chemical. A suggestion by the General Manager of General Motors' Frigidaire division that General Motors itself manufacture it was rejected by Sloan (General Motors' President) and General Motors then suggested to du Pont that they form a joint company to produce it (Op. 171–172). Such a company was formed, with du Pont receiving 51% of its stock (Op. 172–173). The agreement between General Motors and du Pont for the organization of this company provided that future chemical developments originating in General Motors laboratories were to be offered first to this du Pont-General Motors company. The purpose of this provision, a General Motors official advised a du Pont official in 1931, was "to remove from some of our organization

the temptation of attempting to build up within General Motors an independent chemical manufacturing activity * * *" (Op. 174).

THE QUESTIONS ARE SUBSTANTIAL

1. The uncontradicted evidence in this case shows, as the district court found, that since 1918 du Pont always has owned at least 23% of General Motors' outstanding stock, and that the remaining stock is widely held, mostly in small amounts; that from 1918 to 1923 du Pont admittedly controlled General Motors, jointly with Durant for the first two years and independently for the next three; that since 1923 du Pont officials or persons closely affiliated with it have held important posts in the General Motors organization; that there has been frequent and intimate "consultation and conference" between the two companies, with General Motors top executives sounding out du Pont concerning prospective personnel appointments and contemplated corporate action; and that du Pont sponsored a stock purchase bonus plan under which General Motors stock was awarded to key General Motors executives by a committee whose membership always had substantial, and sometimes majority, du Pont representation.

In the light of these admitted facts, we submit that the district court's finding that since the 1920's du Pont has not had, and today does not have, "practical or working control" of General

Motors, is patently erroneous because it "ignore[s] the realities of intercorporate relations." *North American Co.* v. *Securities and Exchange Commission*, 327 U. S. 686, 693. In the *North American* case, this Court pointed out (*ibid.*) that "[h]istorical ties and associations, combined with strategic holdings of stock, can on occasion serve as a potent substitute for the more obvious modes of control [citations]. Domination may spring as readily from subtle or unexercised power as from arbitrary imposition of command." The Court further pointed out (*id.*, at 692) that the North American Company's lack of intervention in its subsidiaries' management "resulted in large part from North American's satisfaction with the local managements of the subsidiaries and from the fact that the local managements have often included men selected by or historically related to North American."

Similarly, in the instant case the "historical ties and associations" between du Pont and General Motors, which go back more than a quarter of a century, combined with du Pont's "strategic holdings" of General Motors stock, plainly suffice to give du Pont "practical or working control" of General Motors. The district court reached a contrary conclusion only by relying on factors which this Court has held are not determinative on that issue, and by ignoring factors which this Court has deemed significant. Thus, the district court emphasized that du Pont had not conducted

itself "as though it were the owner of a majority of the General Motors stock" (Op. 40; see Op. 33). This Court has recognized, however, that substantially less than 51% of the outstanding stock of a large corporation may give control, particularly where the remaining stock is widely distributed among a large number of relatively small holders. E. g., *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, 95–96 (46%); *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 146 (33.5%).[4] On the other hand, the district court ignored the significance of du Pont's "subtle or unexercised power" (*North American* case, *supra*) when it found (Op. 39) that, although some du Pont representatives participated in the making of bonus awards to General Motors executives, there is "no evidence" that in doing so they attempted to further du Pont's interests as a supplier of General Motors and as a chemical manufacturer. The business judgment of General Motors officials whose selection as recipients of huge bonus awards was thus dependent upon the favor of persons allied with du Pont inevitably would reflect that dependence.

The question of the standard to be applied in determining questions of intercorporate control

[4] Cf. *Morgan Stanley & Co.* v. *Securities and Exchange Commission*, 126 F. 2d 325 (C. A. 2) (20%), especially Judge Learned Hand, concurring, at 333: "* * * we can take judicial notice of the fact that the ownership of twenty per cent of the voting power of a company makes the owner 'liable' to have practical control."

under the antitrust laws obviously is one of substantial public importance. We submit that the district court's narrow concept of control would seriously reduce the effectiveness of those laws in promoting competition and preventing monopoly.

2. The district court's erroneous conclusion that du Pont does not control, or have power to control, General Motors colored its consideration of the evidence relating to the trade relationships between those companies. For the court evaluated that evidence on the assumption that the two companies at all times dealt with each other at arm's-length, whereas the fact is that du Pont's controlling influence in General Motors made such a relationship impossible. Managerial judgments reflect a wide variety of factors. In making decisions, General Motors officers, high and low, could not be free from the consciousness, indeed the vivid realization, that determinations favorable to du Pont's interests were likely to lead to personal promotion and financial reward. This consciousness necessarily affected the attitude of General Motors personnel in their dealings with du Pont. We submit that the district court's failure to recognize this factor resulted in serious misappraisal of the significance of the Government's evidence.

For example, the court found that General Motors secured du Pont's services as a manufacturer of TEL "in the unrestrained exercise of its own judgment" (Op. 170); that General

Motors' substantial fabric purchases from du Pont "were based upon each division's exercise of its business judgment" (Op. 144); and that Fisher Body "at all times conducted its purchasing with respect to finishes, fabrics and all other products in accordance with its own best judgment" (Op. 114). But "best judgment", when it is a question whether to purchase supplies from a company which controls the purchaser rather than from the latter's competitors, can hardly be deemed objective. Similarly, the court's conclusion that there was "no evidence" that General Motors "was ever *prevented* by du Pont from using a finish manufactured by one of du Pont's competitors" (Op. 133, emphasis added) ignores the subtle pressures and influences exerted upon General Motors by its relationship to du Pont.

We submit that the interlocking corporate relationships in this case, and the consequent exclusion of du Pont's competitors from access to a substantial segment of the market, constitute an illegal combination in restraint and monopolization of trade in violation of the Sherman Act. Cf. *United States* v. *Reading Co.*, 253 U. S. 26; *United States* v. *Yellow Cab Co.*, 332 U. S. 218. Here, as in *Associated Press* v. *United States*, 326 U. S. 1, 10, competitors who seek to do business with General Motors "have a hard road to travel." The fact, upon which the district court relied (e. g., Op. 115), that such competitors were not completely excluded is not determinative, since

"the fact that an agreement to restrain trade does not inhibit competition in all of the objects of that trade cannot save it from the condemnation of the Sherman Act." *Associated Press* case, *supra,* at 17 and cases there cited. Indeed, "[c]ombinations are no less unlawful because they have not as yet resulted in restraint." *Id.,* at 12.

3. The district court further erred in holding that du Pont's original acquisition of General Motors stock did not violate Section 7 of the Clayton Act. Although the district court recognized (Op. 220) that a violation of that section may occur "in the absence of an actual restraint of trade where it is established that there is a reasonable probability that a condemned restraint will result from an acquisition of stock," it was unable to find such a probability in this case because "no restraint of trade has resulted" in the more than thirty years since the stock was acquired in 1918.

As we have already shown (*supra,* pp. 20–22), the court applied an erroneous standard in concluding that there had been no restraint of trade under the Sherman Act, and its conclusion of no restraint under the Clayton Act is similarly incorrect. But assuming *arguendo* that no actual restraint has been shown, we submit that the history of the relationship between du Pont and General Motors establishes that the acquisition created a sufficient *probability* of restraint to show violation of Section 7. That Section condemns

acquisitions which "may" restrain competition or tend toward a monopoly, as well as those which actually do. Cf. *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 356. Once the power to restrain exists—and the power to control plainly includes the power to restrain—there is a violation of Section 7 whether or not that power has been exercised.

4. The case itself is of great significance. General Motors is one of the largest companies in the country: in 1947 it had assets of almost $2,500,000,000, sales of $3,800,000,000 and net income of $288,000,000 (Op. 72). In the same year, du Pont had assets of almost $1,500,000,000, sales of $780,000,000 and net income of $120,000,000 (*ibid.*). General Motors' purchases from du Pont cover a wide variety of products, and the chemical discoveries and processes which have been the subject of special dealings and relationships between them are of key importance in the industrial world. The question whether it is consistent with the objectives of the Sherman and Clayton Acts to permit these economic giants to remain interlocked (the one retaining in the other an interest worth more than two billion dollars) is of obvious importance to the economy of the country.

CONCLUSION

The questions presented by this appeal are substantial and they are of public importance. The case itself is of great significance. It is respectfully submitted that probable jurisdiction should be noted.

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JUNE 1955.

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